

Wilmington, Delaware  
April 1, 2010

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON** that the Lease Agreement between the Riverfront Development Corporation of Delaware ("RDC") and the City of Wilmington, acting by and through its Department of Public Works, granting to RDC a lease of part of the right-of-way of Poplar Street between the Christina River and Front Street within the City for parking purposes, a copy of which is attached hereto and made a part hereof, is hereby approved, and the Commissioner of Public Works is hereby authorized and directed to execute as many copies of said Lease Agreement as may be necessary.

Passed by City Council,  
April 1, 2010

ATTEST: Maribel Ruiz  
City Clerk

Approved as to form this 24  
day of March, 2010

[Signature]  
Senior Assistant City Solicitor

**SYNOPSIS:** This Resolution approves a Lease Agreement between the City and Riverfront Development Corporation of Delaware ("RDC"), to permit RDC to install a secured parking area in the Poplar Street right-of-way between the Christina River and Front Street.

RDC will pay the City annual rent of \$37.50 (\$0.50 per linear foot) plus a one time administrative review fee of \$1,500. The term of the License Agreement will be for a period of five years, with successive five-year extensions unless either party sends a termination notice at least 6 months prior to the expiration of the current five year term.

#3345

Sponsor:

Council  
Member  
Shabazz

## **LEASE AGREEMENT**

**THIS LEASE AGREEMENT** ("Lease") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the CITY OF WILMINGTON, a municipal corporation of the State of Delaware having an address of 800 French Street, Wilmington, Delaware 19801-3537 (hereinafter referred to as "Lessor" or "City"), and RIVERFRONT DEVELOPMENT CORPORATION OF DELAWARE, a Delaware corporation having an address of Riverfront Development Corporation 815 Justison Street, Wilmington, Delaware 19801 (hereinafter referred to as "Lessee" or "RDC"). Lessor and Lessee are sometimes collectively referred to as the "Parties".

### **Recitals**

**WHEREAS**, Lessor is the owner of a certain piece or parcel of real property comprising a portion of the right of way of Poplar Street, between Front Street and the Christina River, situate in the City of Wilmington, New Castle County, Delaware, as more particularly shown on the drawing attached hereto as Exhibit "A" and incorporated herein by reference (the "Property"); and

**WHEREAS**, underneath a portion of the Property are a portion of a sewer main that is owned, operated and maintained by the City (the "Sewer Main") and a portion of a water main owned and maintained by the City (the "Water Main"); and

**WHEREAS**, it is the intention of the Parties that Lessee will lease the Property from Lessor in order that the Property may principally be utilized as a vehicular parking area so long as all owners and tenants of properties adjacent to the Property and their contractors, agents and invitees have unimpeded vehicular access to their respective properties located adjacent to the

Property and provided further that pedestrians have full complete unimpeded access to the Christina River from sunrise to sunset.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Property, upon the terms and conditions set forth herein.

**Agreements**

1. **Term; Renewal; Property.** The term of this Lease shall commence on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 (the "Lease Commencement Date"), and shall thereafter continue in force for a period of five (5) years until its expiration on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Term"), unless sooner terminated pursuant to the provisions herein. Thereafter, the Lease will automatically renew for successive five (5) year renewal terms unless terminated by either party in writing to the other not less than six (6) months prior to the expiration of the Term or any renewal thereof, or unless otherwise terminated pursuant to the terms of this Lease. Except as provided herein, Lessor shall deliver possession of the Property to Lessee on the Lease Commencement Date free and clear of all leases, licenses and other rights of possession, use or occupancy of record. The Property is leased to Lessee in "as is" condition without any representation or warranty regarding fitness for any particular purpose or use, and subject to the Sewer Main and Water Main and any existing easements of record. Anything in this Lease to the contrary notwithstanding, the Lease shall not become effective until it is approved by the Wilmington City Council.

2. Rent. Lessee shall pay to Lessor the sum of Thirty-seven Dollars and Fifty cents (\$37.50) (\$.50 per linear foot) as annual rental plus a one time administrative review fee of Fifteen Hundred Dollars (\$1,500.00) for the Property (the "Rent"), said Rent shall be paid by Lessee to Lessor at the Lease Commencement Date and on each anniversary thereafter, including during any renewal terms.

3. Use. Lessee, its contractors, agents, invitees, employees and sublessees shall have full use of the Property subject to the following:

(a) All owners, tenants and their contractors, agents and invitees shall have full complete unimpeded access to their respective properties located adjacent to the Property.

(b) All pedestrians shall have unimpeded access to the Christina River between sunrise and sunset.

4. Improvements. Prior to installing or constructing any improvements on the Property, Lessee must submit construction drawings to the City's Department of Public Works for review and approval. Lessee shall not install or construct any improvements on the Property without the prior written consent of the City's Department of Public Works. Lessee shall provide rights of access to Lessor permitting Lessor to service repair or replace the Water Main and the Sewer Main at the locations depicted on Exhibit B (to be furnished).

5. Maintenance. Lessee shall, at its sole cost and expense, during the Term hereof and any renewals (i) maintain the Property and any improvements thereon, said maintenance to include, but not be limited to (a) repaving, (b) asphalt repair, (c) parking area striping or signage, (d) snow and ice removal, (e) landscaping, trash removal and grounds maintenance and (f) repairing or replacing existing street lamps; and (ii) pay the cost of all electricity to power any site lighting serving the Property.

6. Liability Insurance. Lessee shall maintain commercial general liability insurance, including contractual liability and personal injury coverage, applicable to the Property and its appurtenances providing, on an occurrence basis, a minimum combined single limit of Two Million Dollars (\$2,000,000.00).

7. Code Compliance. Lessee shall be responsible during the Term hereof and any renewals, at its sole cost and expense, to ensure that the Property shall be in compliance with all applicable codes, statutes, regulations, laws or ordinances (collectively, "Statutes") including, but not limited to, those Statutes relating to hazardous or noxious substances. Lessee hereby agrees to indemnify and hold harmless Lessor, its employees, agents and contractors from and against any claims, actions, liability, costs and expenses arising from Lessee's violation of any of said Statutes. Anything in this Lease to the contrary notwithstanding, the Parties hereto covenant and warrant to each other that Lessee shall in no way be responsible for any costs, expenses, liabilities, judgments or damages (including attorneys' fees or costs) in any way related to or resulting from the presence of any hazardous substances or other unsatisfactory environmental condition(s) affecting the Property that existed before the Lease Commencement Date.

8. Taxes; Assessments.

(a) Lessee agrees to pay all real estate and similar ad valorem taxes or assessments which may be lawfully levied against Lessee's occupancy or use of the Property, or any improvements placed thereon as a result of Lessee's occupancy. The aforesaid taxes and assessments shall be prorated between Lessor and Lessee during the first and last years of this Lease.

9. Surrender of Property. At the expiration or sooner termination of the Lease, Lessee shall surrender the Property to Lessor in reasonably the same condition as existed at the Lease Commencement Date, reasonable wear and tear excepted. All personal property and fixtures which remain on the Property upon expiration or termination and which have not been removed by Lessee within thirty (30) days from said expiration or termination shall become the property of Lessor at no cost to Lessor.

10. Assignment; Subletting. This Lease shall be assignable to the owner of any property located adjacent to the Property; provided however, that such assignment or subletting shall not relieve RDC of responsibility hereunder.

11. Entry Upon Property; Reservation of Rights. Lessor, its employees, contractors and agents shall have the right to enter upon the Property, upon reasonable advance notice to Lessee and in a manner causing as minimal a disruption as reasonably possible to Lessee's occupancy of the Property, for purposes of maintaining, repairing, replacing or inspecting the Sewer Main or Water Main. Lessor, its employees, contractors and agents may enter the Property at any time in emergency situations and take whatever action is reasonably required. Lessor reserves unto itself the right to enter into such agreements for the granting of easements or licenses affecting the Property so long as said easements and/or licenses are not inconsistent with Lessee's permitted use of the Property. Lessor specifically reserves the right to have access as aforesaid to the Property relative to any easement so granted by Lessor.

12. Indemnification. Lessee hereby agrees that it shall and hereby does defend, indemnify, and hold Lessor, its officers, agents and employees harmless from any and all claims, actions, liability, costs and expenses for damage or injury (including death) to any person or to any property, including reasonable counsel fees ("claims"), which damage, injury, or death

arises from Lessee's use and/or occupancy of the Property, and/or Lessee's breach of any of the terms and conditions contained herein, and/or the wrongful acts or omissions of Lessee, its agents, employees, licensees or invitees on the Property, excluding any claims arising from Lessor's (and Lessor's officers, agents, employees, licensees, and invitees) own negligent, reckless and/or intentionally unlawful conduct.

13. Notice. Whenever notice in writing to one party by the other shall be required by the terms of this Lease, said notice shall be sent to the party at the address stated below by certified mail, return receipt requested. Any other correspondence by one party to the other may, at the discretion of the transmitter, be sent by regular mail or hand-delivered at the below stated address. In the event there is a change of address, the party so changing its address shall immediately notify the other party in writing.

Lessor: City of Wilmington  
Department of Public Works  
Louis L. Redding City/County Building  
800 North French Street, 6th Floor  
Wilmington, DE 19801-3537

With a copy to: City Solicitor,  
Louis L. Redding City/Cty. Bldg.  
800 North French Street, 9<sup>th</sup> Floor  
Wilmington, DE 19801

Lessee: Riverfront Development Corporation of Delaware  
Attn: Executive Director  
Riverfront Development Corporation  
Chase Center on the Riverfront  
815 Justison Street  
Wilmington, Delaware 19801

14. Default. The occurrence of any one or more of the following events during the term of this Lease (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity, or before any administrative

tribunal, which has prevented or might prevent compliance by Lessee with the terms of this Lease) shall constitute a default hereunder:

- (i) Lessee shall fail to pay any installment of Rent when due and such failure continues for more than ten (10) days after Lessor provides written notice thereof; or
- (ii) Lessee shall fail to observe or perform any of Lessee's other covenants, agreements or obligations hereunder (i.e., other than those described in subparagraph (i) above), and such failure shall not be cured within thirty (30) days after Lessor shall have given to Lessee written notice specifying such default or defaults or such additional period as may be necessary to reasonably effect such cure provided Lessee commences to cure within thirty (30) days and thereafter diligently pursues the same; or
- (iii) (a) Lessee is adjudicated a bankrupt or insolvent, or (b) Lessee shall file a bill in equity or otherwise initiate proceedings for the appointment of a receiver of Lessee's assets, or (c) Lessee shall file any proceedings in bankruptcy or for reorganization or an arrangement under any federal or state law, or (d) any proceedings in bankruptcy or for the appointment of a receiver shall be instituted by any creditor of Lessee under any state or federal law and the same is not dismissed within sixty (60) days, or (e) Lessee shall make an assignment for the benefit of its creditors, or (f) Lessee is



levied upon and is about to be sold out upon the Property under execution or other legal process.

- (iv) Lessee shall cease to exist as a valid corporation under the laws of the State of Delaware.

15. Remedies. If Lessee fails to observe or perform any covenant, agreement or undertaking of Lessee contained in this Lease, then Lessor shall be entitled to terminate this Lease (in which case Lessee shall immediately vacate the Property) and to exercise all other rights and remedies available to Lessor under this Lease or at law or in equity. Lessee shall, upon demand therefore, reimburse Lessor for all costs and expenses, including court costs and reasonable attorneys' fees, incurred by Lessor in enforcing Lessee's obligations under this Lease and exercising any of the Lessor's rights and remedies hereunder.

16. Lessor's Right to Terminate. Anything in this Lease to the contrary notwithstanding, Lessor shall have the right at any time, upon advance written notice to Lessee, to terminate this Lease with respect to any portion of the Property required by the City for transportation related uses sixty (60) days before bids are to be solicited for contracts for improvements on that portion of the Property required by the City. .

17. Successor and Assigns. This Lease shall be binding upon and inure to the benefit of the Lessor and Lessee and their respective legal representatives, successors and assigns.

18. Wage Taxes. At all times during the Lease, Lessee shall be responsible to the City of Wilmington for wage taxes for Lessee's employees in accordance with the City of Wilmington Wage Tax Law as it may be amended from time to time.

19. Modification, Changes and Amendments. The Parties hereto acknowledge that there are no oral agreements or conditions pertaining hereto and that this Lease

constitutes the entire understanding of the Parties. No changes, modifications or amendments hereto shall be effective unless same shall be in writing and be signed by Lessor and Lessee.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

21. Cancellation of Prior Leases, Agreements, etc. This document comprises the entire agreement between the Parties hereto relative to the subject matter hereof and no earlier agreements, leases or other undertakings entered into by either party or its predecessors or assignors in connection therewith shall be of any force or effect.

22. Eminent Domain.

(a) If the Property or any portion thereof shall be taken by public or quasi-public authority under any power of eminent domain or condemnation, and the taking of which shall render the Property unusable by Lessee for the use herein set forth, Lessee shall have the right to terminate this Lease by written notice to Lessor. Lessee shall not be entitled to any share of any condemnation award paid in connection with such taking.

(b) Except for any taking set forth in subparagraph (a) above, if any part of the Property shall be acquired or condemned such that the balance can be restored consistent with Lessee's permitted use within 180 days, Lessee shall restore the Property substantially to the condition in which such Property existed prior to any such taking or condemnation using condemnation proceeds made available by Lessor. Such acquisition or condemnation as aforesaid of only a part of the Property shall not terminate this Lease or entitle Lessor to terminate this Lease.

23. Quiet Enjoyment. Lessor covenants that Lessee shall quietly have and enjoy the Property during the Term of this Lease (including any renewals) without hindrance or molestation.

24. Mechanics' Liens. Lessee shall not suffer or permit any mechanic's lien to be filed against the interest of Lessor or Lessee in the Property by reason of work, services or materials supplied to Lessee, the Property, or any part thereof, and Lessor's consent to such work, services and materials shall not be deemed to constitute Lessor's consent for the purposes of rendering the Property, or any part thereof, liable to such liens. If any such lien shall be filed at any time, Lessee shall promptly, and in any event within thirty (30) days after the filing thereof, cause the same to be discharged of record, provided, if Lessee shall promptly bond such lien with a responsible surety company, Lessee may contest the amount or validity of any such lien by appropriate proceedings, diligently prosecuted, and such contest shall defer for its duration Lessee's duty hereunder to discharge the same. Upon request by Lessee, Lessor shall execute and deliver any and all such documents or instruments, and shall take any and all such other action as shall be necessary or proper to permit Lessee to bring such proceedings in Lessee's or Lessor's name, or in the names of both of them, or otherwise to facilitate the conduct of such proceedings by Lessee.

25. Time of the Essence. Time wherever specified herein for satisfaction of conditions or performance of obligations by Lessor or Lessee is of the essence of this Lease.

26. No Partnership. The Parties do not intend to create hereby any partnership or joint venture between themselves with respect to the Property or any other matter.

27. Severability. Any provision or provisions of the Lease which shall be invalid, void or illegal shall in no way effect, impair or invalidate any other provision hereof, and the remaining provisions hereof shall remain in full force and effect.

28. Captions. The captions and headings used herein are for convenience and reference only and shall not constitute a part of this Lease, nor shall they affect the meaning, construction or effect of this Lease.

29. Authorization. Lessor and Lessee are duly authorized to execute and deliver this document.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Lease Agreement to be executed by their duly authorized officials on the day and year above written.

LESSOR:

CITY OF WILMINGTON

By: \_\_\_\_\_ (SEAL)  
Kash Srivivasan,  
Commissioner of the Department of Public Works

Approved as to form:

 3/23/10  
Assistant City Solicitor

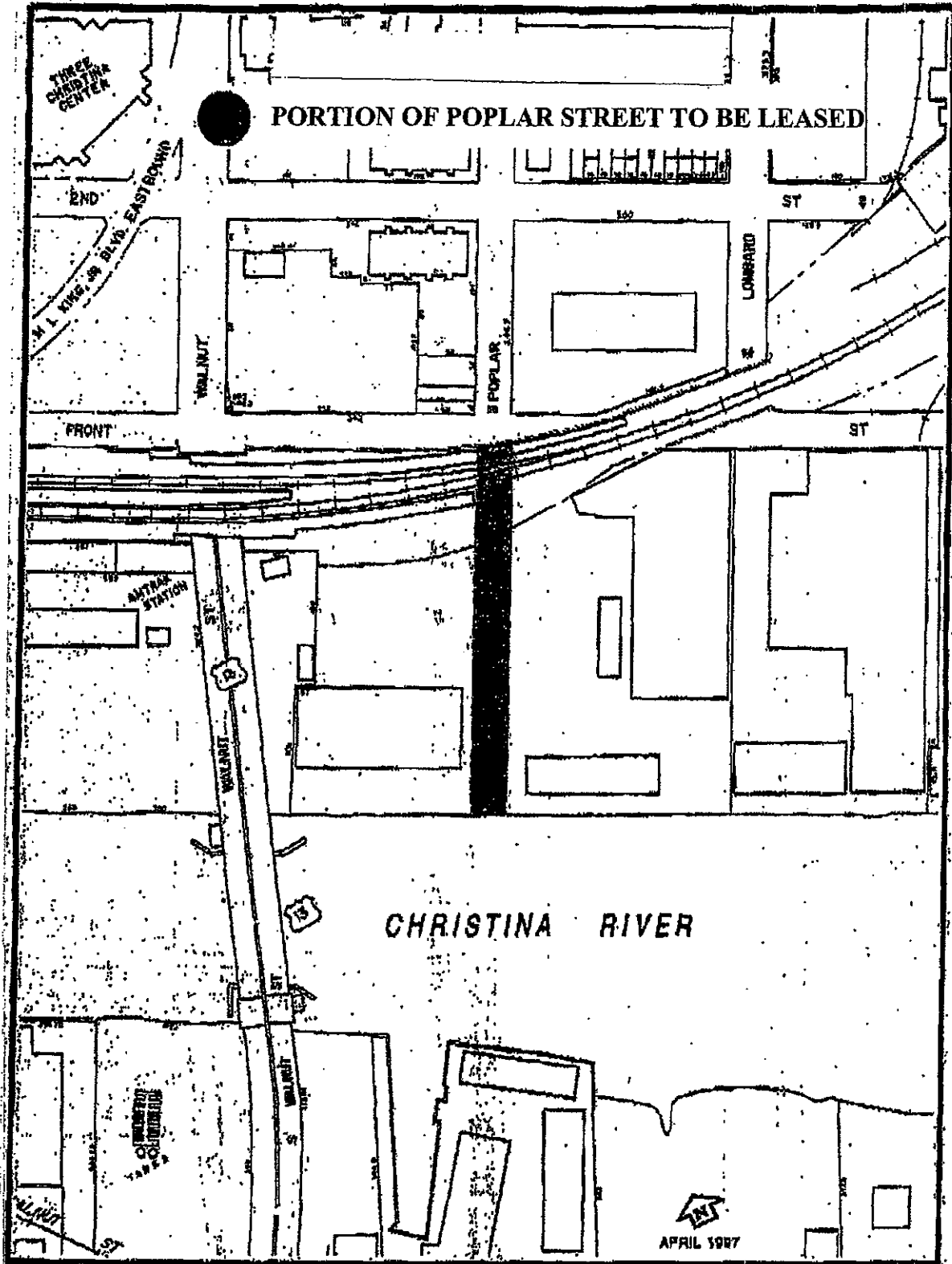
Attest: \_\_\_\_\_ (SEAL)  
City Clerk

LESSEE:

RIVERFRONT DEVELOPMENT  
CORPORATION OF DELAWARE

By: \_\_\_\_\_ (SEAL)  
Name:  
Title:

Attest: \_\_\_\_\_ (SEAL)  
Name:  
Title:



**EXHIBIT B**  
**Showing the location of Water Main and Sewer Main**

[to be provided]